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In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

	) Dept. 10
PEOPLE OF THE STATE	) Case No.: 15-6705
	) NOTICE OF MOTION TO
CALIFORNIA,	) DISMISS BECAUSE OF DENIAL
	) OF RIGHT TO SPEEDY TRIAL
Plaintiff,	)
	)
vs.	)
	)
James E. Horton,	)
	)
Defendant	)
	)
	)

TO THE ABOVE ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF YOLO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on _____, in Department ____ at _____, or as soon thereafter as the matter may be heard, the defendant, James E. Horton, will move the Court to dismiss the accusatory pleading filed herein on the grounds that the prosecution has unreasonably delayed, violating the defendant's right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 15 of the California Constitution. The unreasonable delay has thus far been two months since arraignment on 12072016. This motion will be based on the attached memorandum of points and authorities, attached declaration, evidence taken at the hearing on this motion, argument at that hearing.

Date:_____

Respectfully submitted,

_____
James E. Horton, In Persona Propria

MEMORANDUM

SUMMARY OF ARGUMENT

Procrastination of public officials has caused actual prejudice to Defendant's fundamental rights to a Fair Trial and Speedy Trial Speedy Trial. Through procedural, incompetent inefficiencies betraying Prosecutorial Harassment, prosecution has caused delay in bad-faith of almost two months for bringing case to trial presumptively prejudicing Defendant.

RULE OF LAW

Postaccusation delay is covered by article I, section 15 of the California Constitution: "[I]n criminal prosecutions, in any event whatever, the party accused shall have the right to a speedy and public trial…" (See also Penal Code section 686.) The California provision for a speedy trial "'reflects the letter and spirit of' the Sixth Amendment to the United Sates Constitution…" (People v Wilson (1963) 60 C2d 139, 144 n2, 32 CR 44.)

The right to a speedy trial is a "fundamental right granted to the accused and… the policy of the law since the time of the promulgation of the Magna Carta and the Habeas Corpus Act." (Harris v Municipal Court (1930) 209 c 55, 60, 285 P 699.) In an effort to implement this constitutional right, the California legislature has enacted a number of specific provisions providing certain time limits. However, the constitutional guarantees are self-executing, and specific legislation is not necessary to bring into effect the rights guaranteed thereunder. (Harris v Municipal Court (1930) 209 C 55, 60, 285 P 699.) Consequently, it remains for the courts to determine whether a defendant's constitutional rights have been impinged, even though no specific statute may have been violated. (Jones v Superior Court (1970) 3 C3d 734, 91 CR 578; Barker v Municipal Court (1966) 64 C2d 806, 51 CR 921; Rost v Municipal Court (1960) 184 CA2d 507, 7 CR 869.)

Pursuant to California Penal Code § 1382(a)-(B)(3), "The court, unless good cause to the contrary is shown, shall order the action to dismissed in the following cases: … Regardless of when the complaint is filed, when a defendant in a misdemeanor… case is not brought to trial within 30 days after he or she is arraigned, whichever occurs later…"

The prosecution has a duty to employ all reasonable means to bring an accused promptly to trial. (Rice v Superior Court (1975) 49 CA3d 200; Plezbert v Superior Court (1971) 22 CA3d 169; Jones v Superior (1970) 3 C3d 734). In both Jones and Rice it was held that there is "no requirement that an accused must seek out the police and invite arrest" (Jones, supra). Therefore, burden to bring to trial timely is upon prosecution.

ANALYSIS

DEFENDANT PREJUDICED BY PROCRASTINATION OF PUBLIC OFFICIALS

Defendant filed a request for discovery on 12162015 which specified in items requests for: 1. Audio visual recordings of dispatch call and arrest (crucial to defendant's defense as exculpatory evidence about a "false report"), and 2. Any investigatory motes of statements of the informant.

On 01152016, he filed a Motion to Compel said discovery. He had visited the District Attorney's office multiple times in full-faith effort to receive disclosure; they failed to disclose.

On 02102015, compulsion of discovery, required by law to be disclosed to defendant, was prejudicially denied. Therefore, defendant was deprived ability to prepare for trial as only very basic police reports had been disclosed – more was in possession of the prosecution. Furthermore, during open hearing on this date, Prosecutor Vanderhoek, in effect, flagrantly admitted blatant procrastination actually and (by tone) implicated defendant's timely and proper requests stating they were giving him too much work as a reason to dismiss them. Thereby, he grossly prejudiced defendant's lawful right to pretrial motion practice as gullful negligence.

At the jury trial date on 02152016, defendant began to address, in discussion, evidence procedure. Suddenly, prosecution produced two items to defendant in his possession: 1. A letter summarizing statements of informant, and 2. The police's audio visual recording of the dispatch call and arrest.

Defendant was not prepared for trial in lieu of the untimely disclosure. The thirty day rule was applied and the case was continued until 04112016.

Procrastination of public officials has caused almost two months of bad-faith delay beyond the 30 days after arraignment pursuant to PC section 1382.

Amongst all the events in the compounding of prosecutorial actions, this was one more incident along a train of malicious procedural harassments. Defendant is being harassed being overburdened by an onslaught of procedural inefficiencies, time-waste delays, prejudicial denials and abuses of legal process arising to actually war on the life, limb and liberty of the defendant (with pretextual motive toward Prosecutorial Harassment).

In *Jackson v. Superior Court,* defendant's trial was set post multiple continuances; parties had agreed to a last extension beyond statutory time period for bringing to trial. On that date, failure of Sheriff's to punctually transport him from confinement to court caused defendant's absence in court when the case was called on docket. He was currently, that moment, held in a holding area of the court. Despite objection of defense counsel, trial was once more continued finding, "The court found good cause to delay trial because 'Sheriff fails to deliver defendant to court." When defense counsel's motion to dismiss pursuant to § 1382 was denied 2 days later, he filed a petition for Writ of Mandate to Dismiss with the Court of Appeal, Second District, Division 3. The Court of Appeal granted defendant's petition and dismissed charges holding: "Defendant's right to speedy trial cannot be stifled by procrastination or neglect by public officials" (*Jackson v. Superior Court* (1991) 230 Cal.App. 3d 1391). Holding relied, in part, on *Sykes* which held that "a speedy trial requires prompt action upon the part of all who are officially concerned, at the least, to the extent that adjudication of a defendant's rights shall not be stifled by the procrastination of officials" (*Sykes v Superior Court* (1973) 9 C3d 83).

The delay in bad faith of almost two months in the instant case is as long as delays found unreasonable in prior cases. For example, In *Kehler v Municipal Court*, a delay of two months caused by a Municipal Court was cause for reversal with an order of dismissal by a Court of Appeals.

In this case, a complaint was filed on 08031951 in Municipal Court against petitioner, Kehler, for seven counts of misdemeanors in the operation of a vehicle. On 08091951, he was arraigned pleading not guilty. Subsequently, Keheler ws granted continuances twice until 03201952.On this date, although defense counsel (with Kehler absent) requested a trial, the court refused on grounds that the defendant was not present. Counsel then moved for dismissal. On 03271952, his motion was denied; the court set a trial date for 05161952. Although counsel objected to such a late date, the court reasoned that date was the earliest possible calendar date for trial."On April 8, 1952, Kehlor filed his petition for writ of mandate in the Superior Court of Stanislaus County praying for an order of that court directing… to dismiss" the criminal complaint contending that "… because of the failure of the court to proceed on March 20 with

the resetting of his trial for May 16, he was thereby deprived of a 'speedy trial' as that phrase is used in Section 13, Article I of the Constitution of this state." Superior Court denied Kehler's petition on grounds that Defendant's absence on 03201952 was not explained by counsel, the Court has lawful right to refuse to proceed without the presence of defendant, and, therefore, PC § 1382 "is not mandatory in these circumstances." Petitioner then petitioned for writ of mandate to the District Court of Appeal, Third District. The Court of Appeals reasoned that lower court's denial of Kehler's petition misinterpreted § 1382 which defines: "defendant in a misdemeanor case in inferior court" is to be brought trial within 30 days after he is arrested "… unless by his own neglect or failure to appear in court when his presence lawfully required…" Furthermore, Defendant knowingly absented himself as rightful pursuant to § 1043 and according to portions, the presence of a defendant is only absolutely mandatory in felony cases. Petitioner claimed denial of Right to Speedy Trial because of bad-faith delay between the dates of 03201952 and 05161952 – a delay accruing two months. Judgement was reversed; lower court was directed to order a dismissal of the criminal complaint.

Therefore, it would be in the interest of justice for the Court to dismiss the charge on grounds that Denial of Right to Speedy Trial is presumed to prejudice Defendant by inordinate delay of prosecution.

DEFENDANT'S RIGHT TO FAIR TRIAL PREJUDICED BY PROTRACTED RESTRAINT OF HIS LIBERTY TO AN AREA

Proceeding on this action would not serve justice, but only prejudice the Defendant in that the delays are causing undue disruption to his life without justifiable cause. At time of arrest, Defendant did not have outstanding warrants, nor a criminal record. Indigent Defendant is not resident to the area. He intends to move on and tend to important life matters, yet his liberty to move is restrained by inordinate bad faith delay – and without income – in proceedings pending for total of over two years in this Court.

Procrastination by public officials in this matter is overbearing upon the Defendant a type of Prosecutorial Harassment that is Bordering on Arrest by unjustly depriving Defendant of liberty and, also, life in that his opportunities for employment are disrupted; associations (such as Church affiliations) are severed and impaired unto ruination (with isolation – deep-seated ostracization) by protracted, punitive, procedural siege in a foreign region. Concurrently, impoverished without domicile, Defendant must expend time-consuming effort toward life-sustaining activities while balancing deliberative, exhaustive labor of Criminal Defense (once again – without income). Having, by necessity, to self-represent in such circumstances is depleting his resources; imposing impediments to conducive working conditions thus retarding his ability to prepare for trial as a Fair Trial issue. Thereby, Defendant is furthermore prejudiced by the drawnout procedural harassment, as above, by inducement of anxiety and infliction of distress of a nature which a reasonable person would expect to be produced circumstantially as a human norm.

Furthermore, Defendant is forced by necessity to self-represent due to severely substantial conflict with counsel being in an unfair conflict with agents of the state. The pivotal case on the federal question concerning definition of standards for determining competence to self-represent, *Indiana v. Edwards,* spawned contributory research and analysis at issue for application in the states. In *The Journal of the American Academy of Psychiatry and the Law,"* Psychiatrists Morris and Frierson published a clinical study on choice to exercise Right to Self-Represent as a phenomena with analysis toward

"professional guidelines related to forensic psychiatric practice" and "limitations of the decision…" The Defendant found article annotated in either *California Jurisprudence* or *American Jurisprudence* or some similar secondary authority for research under the topic of Competence to Self-represent confronted with in Case numbered 13-0003626 and for his *Faretta* motion.

Amongst positive reasons for such choice, vindicated by these researchers, include, "… little trust in the fairness of the legal system" when it is reasonable to believe that Fiduciary Interests of "public defenders" are compromised since "they are employees of the state" (Douglas m. Morris, MD, and Richard L. Frierson, MD, *Pro Se Competence in the Aftermath of Indiana v. Edwards*, 36 J Am Acad Psychiatry 551-557 (2008)). Obviously, such determinants would constitute an unfair conflict between a Defendant and Agents of the State necessitating self-representation for any adequate defense (especially if defendant is indigent). Defendant, and rationally by his experience, claims: evidence shows such a condition exists in this case pending (as well as others pending simultaneously) giving rise to a severely substantial conflict because of gross ineffective counsel by public defenders.

Meanwhile, during the aforementioned administrative restraint affected throughout of Case numbered 13—003628, a total accumulation of four criminal matters have overbearingly initiated by the Yolo County District Attorney's Office. He now needs to self-represent (and in these Extraordinary Circumstances) in all four cases simultaneously. According to *Serna,* "Right to speedy trial protects criminal defendant against oppressive pretrial incarceration, anxiety, concern and disruption of his everyday life" (Serna v Superior Court (1985) 40 C3d 239). Furthermore, this Court reasoned, quoting from *U.S. v Marion*:

> "Inordinate delay between arrest, indictment and trial may impair a defendant's ability to present an effective defense. But the major evils protected against by the speedy trial guarantee exists quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with a Defendant's liberty, whether he is frre on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to (reputation harm), and creat anxiety in him, his family and friends…" (*U.S. v Marion* (1971) 404 US 307 as quoted in *Serna v Superior Court* (1985) 40 C3d 239).

PLEASE NOTE, Especially when Defendant lacked criminal record prior to series frivolous incriminations, Defendant asserts: Due respect for his Due Process Right for Innocence until Proof of Guilt demands just consideration of rational claims as presented during prior case above mentioned as Case numbered 13-0003628 – namely that facts surrounding cases evidence that charges result out of (and with a motive for) Retaliatory Malicious Overzealous Prosecution and are based on false arrests and/or frivolous, selective grounds. Therefore, it would be in the interest of justice for the Court to dismiss the charge.

Whereas scheduling for Defendant's jury trial, with excessively prejudicial, procedural inefficiency, has thus far been delayed since 12072016 hereunto; effectively, Defendant's right to a speedy trial under both the Constitutions of the United States of America and of California respectively since Defendant was prejudiced by the lengthy, cumulative delays.

Wherefore, Defendant prays to the Lord Jesus Christ and moves this Court, Sovereignly Ordained to be in position at this time, for once, to open its eyes to full context and consider the merits of this motion, and respectfully motions this Court to dismiss the accusatory pleading.

Date:_____ _____

James E. Horton, In Propria Persona